

options position and exercise limits<sup>7</sup> for positions held by affiliates of FINRA members approved by the Commission as “OTC derivatives dealers.”<sup>8</sup> Under the proposal, FINRA would expand eligibility for its delta hedging exemption beyond OTC derivatives dealers by allowing members and certain non-member affiliates<sup>9</sup> to rely on this exemption if its position in standardized and/or conventional equity options is delta neutral under a “Permitted Pricing Model.”<sup>10</sup> The options contract equivalent of the net delta<sup>11</sup> of a hedged options position still would be subject to the position limits in Rule 2860 (subject to the availability of any other position limit exemptions).<sup>12</sup> A member that intends

<sup>7</sup> The proposed rule change does not expressly amend FINRA’s options exercise limits in Rule 2860(b)(4) because such exercise limits apply only to the extent Rule 2860(b)(3) imposes position limits. Thus, as delta neutral positions would be exempt from position limits under the proposed rule change, such positions also would be exempt from exercise limits. See NASD Notice to Members 94-46 (June 1994) at 2 (“\* \* \* exercise limits correspond to position limits, such that investors in options classes on the same side of the market are allowed to exercise \* \* \* only the number of options contracts set forth as the applicable position limit for those options classes.”). Similarly, for positions held that are not delta neutral, only the option contract equivalent of the net delta of such positions would be subject to exercise limits.

<sup>8</sup> See Securities Exchange Act Release No. 50748 (November 29, 2004), 69 FR 70485 (December 6, 2004) (SR-NASD-2004-153).

<sup>9</sup> The Commission notes that only those non-member affiliates identified in the definition of “Permitted Pricing Model” would be eligible to rely on the delta hedging exemption. See *infra* note 10.

<sup>10</sup> “Permitted Pricing Model” for purposes of this exemption would be a pricing model used by: (1) A member or its affiliate subject to consolidated supervision by the Commission pursuant to Appendix E of Rule 15c3-1 under the Act (*i.e.*, a consolidated supervised entity or “CSE”); (2) a financial holding company (“FHC”) or a company treated as an FHC under the Bank Holding Company Act of 1956, or its affiliate subject to consolidated holding company group supervision; (3) a Commission registered OTC derivatives dealer; (4) a national bank under the National Bank Act; and (5) a member, or non-member affiliate (that is part of a CSE or FHC), using a pricing model maintained and operated by the Options Clearing Corporation. See proposed Rule 2860(b)(3)(A)(vii)(b)(1).

<sup>11</sup> “Net delta” would be defined to mean “the number of shares that must be maintained (either long or short) to offset the risk that the value of an equity options position will change with incremental changes in the price of the security underlying the options position.” See proposed changes to Rule 2860(b)(2)(GG).

“Options Contract Equivalent of the Net Delta” would be defined to mean the net delta divided by the number of shares underlying the options contract. See proposed Rule 2860(b)(2)(LL).

<sup>12</sup> See proposed Rule 2860(b)(3)(A)(vii)(b). The Commission notes that Rule 2860(b)(3)(A)(vii) provides for multiple, independent hedge exemptions. Of course, to the extent that a position is used to hedge for the purpose of one exemption from position limit requirements, such as the delta hedge exemption, such position cannot be used to take advantage of another exemption from position limit requirements.

to employ, or whose non-member affiliate intends to employ, this exemption would be required to provide a written certification to FINRA stating that the member and/or its affiliate will use a Permitted Pricing Model, and that if an affiliate ceases to hedge stock options positions in accordance with such systems and models, it will provide immediate written notice to the member.<sup>13</sup> Furthermore, any member or designated aggregation unit would be required to report any aggregate position of 200 or more contracts on the same side of the market and the options contract equivalent of the net delta of a position representing 200 or more contracts.<sup>14</sup> In addition, the options positions of a non-member relying on this exemption would be required to be carried by a member with which it is affiliated.<sup>15</sup>

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities association.<sup>16</sup> In particular, the Commission believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,<sup>17</sup> which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission has previously stated its support for recognizing options positions hedged on a delta neutral basis as properly exempted from position limits.<sup>18</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (SR-NASD-2007-044), as modified by Amendment No. 1, be, and it hereby is, approved.

<sup>13</sup> See proposed Rule 2860(b)(3)(A)(vii)(b)(3).

<sup>14</sup> See proposed Rule 2860(b)(3)(A)(vii)(b)(4).

<sup>15</sup> See proposed Rule 2860(b)(3)(A)(vii)(b)(3).

<sup>16</sup> In approving this rule, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>17</sup> 15 U.S.C. 78o-3(b)(6).

<sup>18</sup> See Securities Exchange Act Release No. 40594 (October 23, 1998), 63 FR 59362, 59380 (November 3, 1998) (File No. S7-30-97) (adopting rules relating to OTC derivatives dealers).

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</sup> 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Trading and Markets pursuant to delegated authority.<sup>20</sup>

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7-24044 Filed 12-11-07; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56910; File No. SR-NASDAQ-2007-071]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3 Thereto, Relating to Generic Listing and Trading Rules for Securities Linked to the Performance of Indexes, Commodities, and Currencies

December 5, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 3, 2007, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which items have been substantially prepared by the Exchange. On October 5, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. On November 29, 2007, the Exchange filed Amendment No. 2 to the proposed rule change. On December 4, 2007, the Exchange filed Amendment No. 3 to the proposed rule change. This order provides notice of and approves the proposed rule change, as modified by Amendment Nos. 1, 2, and 3 thereto, on an accelerated basis.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to: (1) Amend NASDAQ Rule 4420(m) to (a) permit the listing and trading of commodity-linked securities (“Commodity-Linked Securities,” and, together with Equity Index-Linked Securities,<sup>3</sup> collectively, “Linked Securities”), and (b) conform

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Currently, NASDAQ Rule 4420(m) relates only to the listing and trading of “Index-Linked Securities” that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes of equity securities. See NASDAQ Rule 4420(m). For purposes of the proposed rule change, however, the Exchange seeks to modify the name of such securities to be “Equity Index-Linked Securities,” among other proposed changes described herein.

the rule with changes to defined terms, adjustments to certain internal cross references, and the equivalent generic listing and trading standards for Linked Securities of other national securities exchanges;<sup>4</sup> and (2) make conforming changes to the quantitative maintenance criteria under NASDAQ Rule 4450(c). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://nasdaq.complinet.com>.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The Exchange proposes to: (1) Amend NASDAQ Rule 4420(m) to (a) permit the listing and trading of Commodity-Linked Securities pursuant to Rule 19b-4(e) under the Act,<sup>5</sup> and (b) conform the rule with changes to defined terms, adjustments to certain internal cross references, and the equivalent generic listing and trading standards for Linked Securities of other national securities exchanges; and (2) make conforming changes to the quantitative maintenance criteria under NASDAQ Rule 4450(c).

#### Generic Listing Standards for Commodity-Linked Securities

NASDAQ's rules currently permit the listing and trading of Equity Index-Linked Securities pursuant to Rule 19b-4(e) under the Act. Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") shall not be deemed a proposed rule change, pursuant to Rule 19b-4(c)(1),<sup>6</sup> if the Commission has approved, pursuant

to Section 19(b) of the Act,<sup>7</sup> the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class. As a result, the Exchange seeks Commission approval to adopt generic listing standards under amended NASDAQ Rule 4420(m), pursuant to which it would be able to continue to list and trade Equity Index-Linked Securities and list and trade Commodity-Linked Securities, in each case, without individual Commission approval of each such product. The Exchange states that any securities it considers to list and/or trade pursuant to NASDAQ Rule 4420(m), as amended, must satisfy the applicable standards set forth therein.

Commodity-Linked Securities are proposed to be defined as securities that provide for payment at maturity of a cash amount based on the performance of one or more physical Commodities or Commodity futures, options or other Commodity derivatives, Commodity-Related Securities,<sup>8</sup> or a basket or index of any of the foregoing (the "Reference Asset").<sup>9</sup> The Exchange proposes that each Reference Asset be subject to one of the following requirements:

- The Reference Asset to which the security is linked shall have been reviewed and approved for the trading of Commodity-Related Securities or options or other derivatives by the Commission under Section 19(b)(2) of the Act<sup>10</sup> and rules thereunder and the conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing

<sup>7</sup> 15 U.S.C. 78s(b).

<sup>8</sup> Under the proposal, the Exchange defines the terms "Commodity-Related Security" and "Commodity" by cross referencing NASDAQ Rule 4630. NASDAQ Rule 4630 defines "Commodity-Related Security" as a security that is issued by a trust, partnership, commodity pool or similar entity that invests, directly or through another entity, in any combination of commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives, or the value of which is determined by the value of commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives. In addition, under NASDAQ Rule 4630, the definition of "commodity" adopts the same meaning of such term as it is defined in Section 1(a)(4) of the Commodity Exchange Act.

<sup>9</sup> As described in more detail herein, the Exchange proposes to include one or more "Currencies" as possible components of a Reference Asset. The Exchange defines "Currency" as one or more currencies, or currency options, futures, or other currency derivatives, Commodity-Related Securities (if any underlying Commodities are currencies or currency derivatives), or a basket or index of any of the foregoing. See proposed NASDAQ Rule 4420(m)(8)(B).

<sup>10</sup> 15 U.S.C. 78s(b)(1).

agreements, continue to be satisfied;<sup>11</sup> or

- The pricing information for each component of a Reference Asset other than a Currency must be derived from a market which is an Intermarket Surveillance Group ("ISG") member or affiliate or with which NASDAQ has a comprehensive surveillance sharing agreement. Notwithstanding the previous sentence, pricing information for gold and silver may be derived from the London Bullion Market Association. The pricing information for each component of a Reference Asset that is a Currency must be either: (1) The generally accepted spot price for the currency exchange rate in question; or (2) derived from a market which (a) is an ISG member or affiliate or with which NASDAQ has a comprehensive surveillance sharing agreement, and (b) is the pricing source for a Currency component of a Reference Asset that has previously been approved by the Commission. A Reference Asset may include components representing not more than 10% of the dollar weight of such Reference Asset for which the pricing information is derived from markets that do not meet the foregoing requirements; however, no single component subject to this exception may exceed 7% of the dollar weight of the Reference Asset.<sup>12</sup>

In addition, the value of the Reference Asset must be calculated and widely disseminated on at least a 15-second basis during NASDAQ's Regular Market Session, and, in the case of a Commodity-Linked Security that is periodically redeemable, the indicative value of the subject Commodity-Linked Security must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during NASDAQ's regular market session.<sup>13</sup> In the case of Commodity-Linked Securities, if the Reference Asset value or indicative value (if required to be disseminated) is not being disseminated as required, or, in the case of Equity Index-Linked Securities, if the value of the index is not being disseminated as required, the Exchange may halt trading during the course of the day on which such

<sup>11</sup> See proposed NASDAQ Rule 4420(m)(8)(A).

<sup>12</sup> See proposed NASDAQ Rule 4420(m)(8)(B).

<sup>13</sup> See proposed NASDAQ Rule 4420(m)(9). E-mail from Alex Kogan, Associate General Counsel, NASDAQ, to Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated December 4, 2007 (confirming that the Information Circular will advise that additional risks may exist with respect to trading Linked Securities on the Exchange during NASDAQ's Pre-Market and Post-Market Sessions, when the index or Reference Asset values or indicative values may not be disseminated).

<sup>4</sup> See, e.g., Section 703.22 of the New York Stock Exchange LLC Listed Company Manual; Sections 107D, 107E, 107F of the American Stock Exchange LLC Company Guide; Rule 5.2(j)(6) of NYSE Arca Equities, Inc.; and Rule 2130 of the International Securities Exchange, LLC.

<sup>5</sup> 17 CFR 240.19b-4(e).

<sup>6</sup> 17 CFR 240.19b-4(c)(1).

interruption occurs and, in any event, will halt trading by the time trading begins on the following trading day if the interruption persists at such time.<sup>14</sup>

#### Conforming Changes to NASDAQ Rule 4420(m)

The Exchange also proposes to conform NASDAQ Rule 4420(m) to reflect the changes made to newly defined terms, adjustments to certain internal cross references, and the equivalent generic listing and trading standards for Linked Securities of other national securities exchanges.<sup>15</sup> Specifically, the Exchange proposes to make the following material changes:

- Currently, NASDAQ Rule 4420(m)(1) provides that the minimum number of holders shall not apply if the Linked Security issue is traded in \$1,000 denominations. The Exchange seeks to amend NASDAQ Rule 4420(m)(1) such that, if the Linked Security is traded in \$1,000 denominations or is redeemable at the option of the holders thereof on at least a weekly basis, then the minimum number of holders and the minimum public distribution of trading units requirements shall not apply.<sup>16</sup>
- The Exchange seeks to change the maximum term of a Linked Security from 10 years to 30 years.<sup>17</sup>
- The proposal modifies the rebalancing requirement for indexes underlying Equity Index-Linked Securities based on the equal-dollar or modified equal-dollar weighting method from at least quarterly to at least semiannually.<sup>18</sup>
- With respect to Equity Index-Linked Securities, the Exchange proposes to establish an exception to the requirement that 90% of the underlying index's numerical value and at least 80% of the total number of its components meet the then-current criteria for standardized options trading. Under the proposal, this requirement would no longer be applicable if (a) no underlying component security represents more than 10% of the dollar weight of the index, and (b) the index has a minimum of 20 components.<sup>19</sup>
- With respect to Equity Index-Linked Securities, the Exchange seeks to clarify the eligibility requirements of components comprising the underlying index. Specifically, all component securities in an index must either be (A) securities (other than securities of a

foreign issuer and American Depository Receipts ("ADRs")) that are (i) issued by a reporting company under the Act or an investment company registered under the Investment Company Act of 1940, which, in each case, has securities listed on a national securities exchange, and (ii) an "NMS stock" (as defined in Rule 600 of Regulation NMS),<sup>20</sup> or (B) securities of a foreign issuer or ADRs, provided that securities of a foreign issuer (including when they underlie ADRs) whose primary trading market outside the United States is not a member of ISG or a party to a comprehensive surveillance sharing agreement with NASDAQ may not, in the aggregate, represent more than 20% of the dollar weight of the index.<sup>21</sup>

Finally, the Exchange proposes to modify NASDAQ Rule 4420(m)(4) to clarify that the payment at maturity may or may not provide for a multiple of the direct or inverse performance of any underlying index, indexes, or Reference Asset, provided that, in no event may a loss (negative payment) at maturity be accelerated by a multiple that exceeds the performance of an underlying index, indexes, or Reference Asset. Under this proposal, it will be possible for positive payment at maturity to be a multiple of the index or Reference Asset performance (including both a multiple of the direct performance and a multiple of the inverse of the actual performance). However, the proposal continues to maintain that, under NASDAQ's proposed generic listing and trading rules for Linked Securities, a negative payment at maturity may not be accelerated by a multiple that exceeds the performance of an underlying index or Reference Asset.

#### Proposed Changes to the Quantitative Maintenance Criteria of NASDAQ Rule 4450(c)

The Exchange also seeks to amend NASDAQ Rule 4450(c) which governs the maintenance criteria for securities listed pursuant to NASDAQ Rule 4420(f) and Linked Securities. Specifically, the proposal provides that, with respect to a Commodity-Linked Security listed pursuant to new NASDAQ Rule 4420(m), delisting or removal proceedings would be commenced (unless the Commission approved the continued trading of the subject security) if any of the listing requirements set forth in new NASDAQ Rule 4420(m) that were applicable at the time of the initial listing of the security

are no longer being met.<sup>22</sup> Notwithstanding the foregoing, a Commodity-Linked Security will not be delisted due to the lack of comprehensive surveillance sharing agreements if the Reference Asset has at least 10 components and NASDAQ has comprehensive surveillance sharing agreements with respect to at least 90% of the dollar weight of the Reference Asset for which such agreements are otherwise required.<sup>23</sup> In addition, under the proposal, delisting or removal proceedings would also be commenced if: (1) the value of the Reference Asset is no longer calculated or widely disseminated as required; or (2) the value of the Reference Asset is no longer calculated or available and a new Reference Asset is substituted, unless the new Reference Asset meets the requirements of new NASDAQ Rules 4420(m) and 4450(c).<sup>24</sup>

#### Surveillance and Information Circular

The Exchange states that the Financial Industry Regulatory Authority, Inc. ("FINRA," f/k/a the National Association of Security Dealers, Inc.), under a regulatory services contract with NASDAQ, will continue to monitor transactions in Linked Securities to identify and discipline any improper trading activity in such securities. The Exchange notes that FINRA's surveillance procedures are adequate to properly monitor the trading of Linked Securities. To the extent applicable, NASDAQ and/or FINRA will also be able to obtain trading and beneficial holder information from the primary trading markets for the components comprising the Reference Asset, either pursuant to bilateral information sharing agreements with those markets or because those markets are SRO members or affiliate members of ISG.

In addition, as currently provided in NASDAQ Rule 4420(m)(8),<sup>25</sup> if the underlying index is maintained by a broker-dealer, the broker-dealer is required to erect a "firewall" around the personnel who have access to information concerning changes and adjustments to the index, and the index must be calculated by a third party who is not a broker-dealer. The required firewall must be structured and maintained in a form satisfactory to NASDAQ in order to prevent the flow of information regarding the index from

<sup>14</sup> See proposed NASDAQ Rule 4420(m)(10).

<sup>15</sup> See *supra* note 4.

<sup>16</sup> See proposed NASDAQ Rule 4420(m)(1).

<sup>17</sup> See proposed NASDAQ Rule 4420(m)(2).

<sup>18</sup> See proposed NASDAQ Rule 4420(m)(7)(B)(iii).

<sup>19</sup> See proposed NASDAQ Rule 4420(m)(7)(B)(vi).

<sup>20</sup> See 17 CFR 242.600(b)(47).

<sup>21</sup> See proposed NASDAQ Rule 4420(m)(7)(B)(vii).

<sup>22</sup> See proposed NASDAQ Rule 4450(c)(4).

<sup>23</sup> See *id.*

<sup>24</sup> See proposed NASDAQ Rule 4450(c)(5).

<sup>25</sup> Under the proposal, NASDAQ Rule 4420(m)(8) has been re-numbered to be NASDAQ Rule 4420(m)(9). See proposed NASDAQ Rule 4420(m)(9).

the index production personnel to sales and trading personnel.

NASDAQ represents that it will continue its current practice of evaluating the nature and complexity of each Linked Security, and distributing, if appropriate, an Information Circular that describes the Linked Security to members, highlighting the particular structure and corresponding risks of the Linked Security.<sup>26</sup> The Information Circular would also reference the suitability requirements for members recommending a transaction in Linked Securities (NASDAQ Rule 2310), indicate that NASDAQ's equity trading rules would apply to the trading of Linked Securities, and note that the registration statement or prospectus for the Linked Security ought to be consulted and delivered, if required, in connection with a Linked Security transaction.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>27</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>28</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments on the proposed rule change were neither solicited nor received.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2007-071 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2007-071. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File number SR-NASDAQ-2007-071 and should be submitted on or before January 2, 2008.

## IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>29</sup> and, in

particular, the requirements of section 6 of the Act.<sup>30</sup> Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>31</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

To list and trade Commodity-Linked Securities, the Exchange currently must file a proposed rule change with the Commission pursuant to section 19(b)(1) of the Act<sup>32</sup> and Rule 19b-4 thereunder.<sup>33</sup> However, Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by an SRO will not be deemed a proposed rule change pursuant to Rule 19b-4(c)(1) under the Act if the Commission has approved, pursuant to section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class. The Exchange's proposed rules for the listing and trading of Commodity-Linked Securities pursuant to Rule 19b-4(e) fulfill these requirements. The Exchange's ability to rely on Rule 19b-4(e) to list and trade Commodity-Linked Securities that meet the applicable requirements of proposed NASDAQ Rule 4420(m) should reduce the time frame for bringing these securities to the market and thereby reduce the burdens on issuers and other market participants, while also promoting competition and making such securities available to investors more quickly.

The Commission has previously approved generic listing standards for such securities that are substantively identical to the Exchange's current proposal.<sup>34</sup> The Commission believes

impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>30</sup> 15 U.S.C. 78f.

<sup>31</sup> 15 U.S.C. 78f(b)(5).

<sup>32</sup> 15 U.S.C. 78s(b)(1).

<sup>33</sup> 17 CFR 240.19b-4.

<sup>34</sup> See *supra* note 4; Securities Exchange Act Release Nos. 55794 (May 22, 2007), 72 FR 29558 (May 29, 2007) (SR-Amex-2007-45) (approving, among other things, generic listing standards for Commodity-Linked Securities and Currency-Linked Securities); and 55687 (May 1, 2007), 72 FR 25824 (May 7, 2007) (SR-NYSE-2007-27) (approving

<sup>26</sup> See Securities Exchange Act Release, No. 53142 (January 19, 2006), 71 FR 4180 (January 25, 2006) (approving NASDAQ's current listing standards for Linked Securities and describing, among other things, the information to be included in the Information Circular). See also *supra* note 13 and accompanying text.

<sup>27</sup> 15 U.S.C. 78f(b).

<sup>28</sup> 15 U.S.C. 78f(b)(5).

<sup>29</sup> In approving this proposed rule change, the Commission has considered the proposed rule's

that the proposed generic listing standards for Commodity-Linked Securities, in addition to the proposed conforming changes to the generic listing standards applicable to all Linked Securities and Equity Index-Linked Securities, should fulfill the intended objective of Rule 19b-4(e) and allow securities that satisfy the proposed generic listing standards to commence trading without the need for public comment and Commission approval.<sup>35</sup>

The Commission notes that any Linked Securities approved for listing and trading would be subject to the FINRA's surveillance procedures to monitor the trading in such securities. The Exchange has represented that, to the extent applicable, NASDAQ and/or FINRA will be able to obtain trading and beneficial holder information from other primary trading markets either pursuant to information sharing agreements with such markets or because such markets are members or affiliate members of ISG.

The Exchange has represented that it will distribute, as appropriate, an Information Circular to members describing the product, the particular structure of the product, and the corresponding risks of trading Linked Securities, including the risks involved in trading such securities during markets sessions other than NASDAQ's Regular Market Session, when an updated index or Reference Asset value, or indicative value, if required, is not calculated or publicly disseminated.<sup>36</sup> In addition, the Information Circular will set forth the Exchange's suitability

generic listing standards for Equity Index-Linked Securities, Commodity-Linked Securities, and Currency-Linked Securities). NASDAQ's proposal also takes into account certain modifications recently made by other national securities exchanges to the various types of Linked Securities, as applicable. *See, e.g.*, 107A of the American Stock Exchange LLC *Company Guide* (reflecting exceptions to the minimum public distribution requirements for certain types of securities, including Linked Securities); Securities Exchange Act Release Nos. 56879 (December 3, 2007) (SR-NYSEArca-2007-110) (approving certain proposed changes to the initial listing and trading standards for Equity Index-Linked Securities); 56838 (November 26, 2007), 72 FR 67774 (November 30, 2007) (SR-NYSEArca-2007-118) (approving certain modifications made to the requirements relating to the indexes underlying Equity Index-Linked Securities); and 56525 (September 25, 2007), 72 FR 56114 (October 2, 2007) (SR-NYSE-2007-76) (approving certain exceptions to the requirement relating to pricing information of components comprising Commodity-Linked Securities and Currency-Linked Securities).

<sup>35</sup> The Commission notes that the failure of a particular product or index to comply with the proposed generic listing standards under Rule 19b-4(e), however, would not preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2), requesting Commission approval to list and trade a particular index-linked product.

<sup>36</sup> *See supra* note 13 and accompanying text.

requirements with respect to recommendations in transactions in Linked Securities to customers and the registration statement or prospectus delivery requirements. The Information Circular will also note that the Exchange's equity trading rules will be applicable to the trading of Linked Securities.

#### Acceleration

The Commission finds good cause for approving the proposed rule change, as modified by Amendment Nos. 1, 2, and 3 thereto, before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that the Exchange's proposed conforming changes to the generic listing standards that apply to all Linked Securities, proposed changes to the generic listing standards for Equity Index-Linked Securities, and the proposed generic listing standards for Commodity-Linked Securities are based on previously approved listing standards for such securities.<sup>37</sup> The Commission is presently not aware of any regulatory issue that should cause it to revisit that finding or would preclude the trading of such securities on the Exchange. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for Linked Securities, subject to the standards and representations discussed herein. Therefore, the Commission finds good cause, consistent with section 19(b)(2) of the Act,<sup>38</sup> to approve the proposed rule change on an accelerated basis.

#### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>39</sup> that the proposed rule change (SR-NASDAQ-2007-071), as modified by Amendment Nos. 1, 2, and 3 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>40</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-23973 Filed 12-11-07; 8:45 am]

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<sup>37</sup> *See supra* notes 4 and 34.

<sup>38</sup> 15 U.S.C. 78s(b)(2).

<sup>39</sup> *Id.*

<sup>40</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56917; File No. SR-NASDAQ-2007-085]

### Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Order Approving Proposed Rule Change, as Modified By Amendment No. 1 Thereto, Amending Nasdaq's Membership Application Rules

December 6, 2007.

#### I. Introduction

On October 30, 2007, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to modify Nasdaq's membership application procedures. The proposed rule change was published for comment in the **Federal Register** on November 6, 2007.<sup>3</sup> On December 4, 2007, Nasdaq filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1 thereto.

#### II. Description of the Proposal

Nasdaq is proposing to amend its 1000 Series rules governing its membership application process to tailor the rules to proprietary trading firms. Under the proposed rule, a "proprietary trading firm" is defined as an applicant: (1) That is not required to become a member of the Financial Industry Regulatory Authority ("FINRA") by section 15(b)(8) of the Act<sup>5</sup> but is a member of another registered securities exchange not registered solely under section 6(g) of the Act; (2) whose source of funds or proposed source of funds to be used for trading are the applicant's own capital, traded through the applicant's own accounts; (3) that does not, and will not have "customers"<sup>6</sup>; and (4) whose principals and representatives acting or

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> *See* Securities Exchange Act Release No. 56722 (October 31, 2007), 72 FR 62709 ("Notice").

<sup>4</sup> In Amendment No. 1, Nasdaq corrected typographical errors and clarified that in Rule 1013(a)(1), an applicant should file an amendment to its membership application no later than 15 days after the applicant "knew or should have known" about facts and circumstances that gave rise to the need for the amendment. Because Amendment No. 1 is technical in nature, it is not subject to notice and comment.

<sup>5</sup> 15 U.S.C. 78o(b)(8).

<sup>6</sup> The term "customer" does not include a broker or dealer. *See* Nasdaq Rule 0120(g).